Supreme Court, U.S.
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No. 85-68

In the Supreme Court of the United States

October Term, 1985

V. P. GOTTSCHALL and V. P. GOTTSCHALL AS CUSTODIAN under the Uniform Gifts to Minors Act for NICHOLAS P. GOTTSCHALL and TERESA GOTTSCHALL, Minors, all in their own behalf, and for all others similarly situated,

Petitioners,

vs.

JONES & LAUGHLIN STEEL CORPORATION, Paul Thayer, Raymond A. Hay, Thomas C. Graham, G. E. Smith, and D. T. Kalil,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

Brief In Opposition To Petition For A Writ Of Certiorari

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August 9, 1985

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COUNTERSTATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should issue a Writ of Certiorari where there has been no final judgment or decree by any Pennsylvania appellate court regarding the protective orders, as required by 28 U.S.C. § 1257(3).

2. Whether this Court should issue a Writ of Certiorari where the protective orders are interlocutory and not final.

3. Whether this Court should issue a Writ of Certiorari where the protective orders conform with this Court's recent ruling in *Seattle Times Co. v. Rhinehart,* 104 S. Ct. 2199 (1984).

CORPORATE LISTING

In 1981, Jones & Laughlin Steel Corporation and Youngstown Sheet and Tube Company merged into Jones & Laughlin Steel, Incorporated ("J&L"). In December, 1984, J&L merged with Republic Steel Corporation, a New Jersey corporation, which consolidated entity thereupon changed its name to LTV Steel Company, Inc. LTV Steel Company, Inc. is a wholly-owned subsidiary of The LTV Corporation. Listed in Appendix A to this brief is respondent's parent corporation, its subsidiary corporations and all corporations with which it is affiliated.

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No. 85-68

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ON PETITION FOR A WRIT OF CERTIORARI
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Brief In Opposition To Petition For A Writ Of Certiorari

STATEMENT OF JURISDICTION

This Court should refuse to exercise jurisdiction over this matter because there has been no final judgment or decree by any Pennsylvania appellate court, as required by 28 U.S.C. § 1257(3). In addition, this Court should refuse to exercise jurisdiction over this matter because, as held by

the Superior Court of Pennsylvania, the two protective orders are interlocutory and not final.

COUNTERSTATEMENT OF THE CASE

Respondents have set forth a counterstatement of the case because the statement of the case set forth by petitioners is inaccurate as well as incomplete.

A. Background

Petitioner V. P. Gottschall ("Mr. Gottschall") was admitted to practice before the Supreme Court of Pennsylvania in 1966. Beginning in 1969 he was employed as an attorney by Jones & Laughlin Steel Corporation ("J&L") and was responsible, *inter alia*, for securities matters until the termination of his active employment in January 1979. From 1976 to the end of his employment with J&L, Mr. Gottschall was an Assistant General Counsel of J&L, and from 1971 through 1979 he was an Assistant Secretary of J&L. Since leaving J&L, Mr. Gottschall has filed a total of six lawsuits against his former client, J&L, including the two actions which underlie Mr. Gottschall's petition.[1]

The nature and extent of Mr. Gottschall's attorney-client relationship with J&L which prompted the protective orders involved in Mr. Gottschall's petition have already been considered by a federal district court in *Edward L. Forstall, et al. v. Jones & Laughlin Steel Corporation, et al.*, Civil Action No. 80-1020 (United States District Court for the Western District of Pennsylvania). In that securities class action involving many of the same allegations involved in the present actions, Mr. Gottschall,

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[1]Summaries of the four other lawsuits which Mr. Gottschall has filed against J&L and which do not underlie Mr. Gottschall's petition are contained in Appendix B to this brief.

an originally named individual plaintiff, was disqualified from prosecuting the action pursuant to Canons 4 and 9 of the Code of Professional Responsibility. The court ruled that Mr. Gottschall's prior representation of J&L as an attorney had a substantial relationship to the matters alleged in his complaint in that action.[2] Mr. Gottschall did not appeal from his disqualification in that action.

B. Procedural History Of The First Protective Order

On October 29, 1980, Mr. Gottschall, as both named class plaintiff and counsel of record, filed a class action against J&L and five individuals who were officers of J&L and/or its parent, The LTV Corporation, in the Court of Common Pleas of Allegheny County, Pennsylvania at No. GD 80-26963. In that action, Mr. Gottschall requests, *inter alia*, that a special investigator be appointed to conduct a "thorough review of the situation" at J&L. On December 30, 1980, J&L filed a petition to disqualify Mr. Gottschall as plaintiff and counsel of record pursuant to Canons 4 and 9 of the Code of Professional Responsibility.

In support of its petition, J&L filed affidavits of facts and documents from its files to show the substantial relationship between Mr. Gottschall's prior representation of J&L and the allegations in his complaint. Judge Silvestri S. Silvestri, the lower court judge, stayed the action pending resolution of the petition to disqualify and entered a protective order sealing those portions of the record pertaining to J&L's petition and prohibiting disclosure of the contents of the sealed portions by Mr. Gottschall to third parties.

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[2]A copy of the order and accompanying opinion dated March 24, 1981 which disqualified Mr. Gottschall is attached hereto as Appendix C.

This order is the first of the two protective orders involved in Mr. Gottschall's petition.

On January 9, 1981, Mr. Gottschall filed an appeal from this first protective order to the Superior Court of Pennsylvania at No. 59 Pittsburgh 1981. Judge Silvestri scheduled a hearing on the petition for disqualification for April 14, 1981. On April 13, 1981, the day before the disqualification hearing, Mr. Gottschall requested, and the Superior Court granted, a stay of the hearing. On August 7, 1981, J&L moved to quash Mr. Gottschall's appeal on the ground that it was interlocutory. By order dated January 12, 1982, the Superior Court directed the parties to brief and argue the jurisdictional propriety of the appeal with the argument on the merits of the appeal.

C. Procedural History Of The Second Protective Order

On December 29, 1980, Mr. Gottschall, as both plaintiff and counsel of record, filed another lawsuit against J&L at No. GD 80-32049 in the Court of Common Pleas of Allegheny County, Pennsylvania. In that action, Mr. Gottschall requests the involuntary dissolution of J&L pursuant to Section 1107 of the Pennsylvania Business Corporation Law. On January 29, 1981, J&L filed a petition to disqualify Mr. Gottschall on the same basis as in GD 80-26963 and also filed affidavits of facts and documents from its files to show the substantial relationship between Mr. Gottschall's prior representation of J&L and the allegations in his petition for involuntary dissolution.

Judge Silvestri stayed the action pending resolution of the petition to disqualify and entered a protective order sealing those portions of the record pertaining to J&L's petition and prohibiting disclosure of the contents of the sealed portions by Mr. Gottschall to third parties. This is

the second of the two protective orders involved in Mr. Gottschall's petition.

On February 24, 1981, Mr. Gottschall took an appeal from this second protective order to the Superior Court at No. 467 Pittsburgh 1981. On April 13, 1981, the Superior Court granted Mr. Gottschall's request for a stay, thus preventing the lower court from conducting a hearing on J&L's petition to disqualify which had been scheduled for April 14, 1981. On August 7, 1981, J&L moved to quash this appeal on the ground that it was interlocutory. By order dated November 18, 1982, the Superior Court directed the parties to brief and argue the jurisdictional propriety of the appeal with the argument on the merits of the appeal. On July 14, 1983, the Superior Court ordered the consolidation of the appeal at No. 467 Pittsburgh 1981 with the appeal at No. 59 Pittsburgh 1981.

D. Procedural History of Appeals On The Protective Orders After Consolidation

In May, 1984, the Superior Court of Pennsylvania heard argument on Mr. Gottschall's appeals and on J&L's motion to quash the appeals as interlocutory. On September 7, 1984, the Superior Court quashed the appeals on the ground that the protective orders were not final so that the court lacked subject matter jurisdiction. *V. P. Gottschall, et al. v. Jones & Laughlin Steel Corporation, et al.*, 482 A.2d 979 (Pa. Super. 1984).

On September 21, 1984, Mr. Gottschall filed a petition for reargument in the Superior Court which was denied, *per curiam,* on November 9, 1984. On December 3, 1984, Mr. Gottschall filed a petition for allowance of appeal with the Supreme Court of Pennsylvania which was also denied, *per curiam,* on April 16, 1985. On July 11, 1985, Mr.

Gottschall filed a Petition for a Writ of Certiorari which is presently pending before this Court.

SUMMARY OF ARGUMENT

There are at least three reasons why this Court should deny the pending Petition for a Writ of Certiorari: (i) there has been no final judgment or decree by any Pennsylvania appellate court, as required by 28 U.S.C. § 1257(3); (ii) the protective orders are interlocutory and not final; and (iii) the protective orders in question conform with this Court's recent ruling in *Seattle Times Co. v. Rhinehart,* 104 S. Ct. 2199 (1984).

ARGUMENT

A. This Court Should Not Issue A Writ Of Certiorari Because There Has Been No Final Judgment Or Decree By Any Pennsylvania Appellate Court, As Required By 28 U.S.C. § 1257(3).

Under 28 U.S.C. § 1257(3), the Supreme Court of the United States can review "... final judgments or decrees rendered by the highest court of a State in which a decision could be had ..." Where the highest state court in which a decision could be had has not rendered a final judgment or decree, this Court has declined to exercise certiorari jurisdiction. *See, e.g., Gillette Co. v. Minor,* 459 U.S. 86 (1982); *Shaffer v. Heitner,* 433 U.S. 186 (1977); *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469 (1975); *Radio Station WOW, Inc. v. Johnson,* 326 U.S. 120, 124 (1945).

In *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469 (1975) this Court reiterated this rule of finality but set forth four distinct exceptions to it. Because the protective orders

in question are not within any of the four exceptions enunciated in the *Cox* case, they fail to meet the jurisdictional requirements of 28 U.S.C. § 1257(3).

The first exception in the *Cox* case is comprised of cases in which the federal claim to be reviewed on interlocutory appeal is, as a practical matter, "conclusive over the case" because the party asserting the claim has no other grounds upon which to rest his case. 469 U.S. at 479. The protective orders do not fall within this first exception because Mr. Gottschall has other grounds upon which to rest his case to obtain the unsealing of the record, *i.e.* demonstrating that there is no substantial relationship between the underlying actions and his prior representation of J&L.

The second exception in the *Cox* case is comprised of those cases in which "the federal issue finally decided by the highest court in the state will survive and require decision regardless of the outcome of future-state court proceedings." 420 U.S. at 480. The protective orders do not fall within this exception because the future state court proceedings regarding Mr. Gottschall's disqualification may obviate the protective orders. If Mr. Gottschall is not disqualified, the court presumably will unseal the affidavits and supporting documents and the First Amendment issue will be resolved in favor of Mr. Gottschall.

The third exception in the *Cox* case is comprised of those cases in which subsequent review of a fully adjudicated claim will be impossible regardless of the ultimate outcome of further proceedings on the merits still to be conducted in the state courts. As Justice White explained, "In these cases, if the party seeking interim review ultimately prevails on the merits the federal issue will be mooted; if he were to lose on the merits, however, the

governing state law would not permit him again to present his federal claims for review." 420 U.S. at 481. The protective orders do not fall within this third exception because if Mr. Gottschall were disqualified, he could appeal to the Pennsylvania Appellate Courts at the conclusion of the action for review of all issues, including any First Amendment issue, he may assert with respect to the protective orders.

The fourth exception in the *Cox* case permits interlocutory review when: (i) "reversal of the state court on the federal issue would be preclusive of any further litigation in the relevant cause of action"; and (ii) failure to consider the court decision immediately "might seriously erode federal policy." 420 U.S. at 482-83. The protective orders do not fall within this fourth exception because their dissolution would not preclude further litigation of either the underlying cause of action or the motion to disqualify. Moreover, this Court's refusal to consider them at this time would not seriously erode any federal policy because, as discussed below, they were entered in conformity with this Court's recent decision in *Seattle Times Co. v. Rhinehart,* 104 S. Ct. 2199 (1984).

In addition to the absence of a "final order" under 28 U.S.C. § 1257(3), no Pennsylvania appellate court has ruled on the merits of the protective orders, as required by 28 U.S.C. § 1257(3). The Superior Court held that the appeals were interlocutory and the Supreme Court of Pennsylvania declined to review the decision of the Superior Court.

Since there is no final order and no determination on the merits by the Pennsylvania courts, this Court should not exericise its jurisdiction under 28 U.S.C. § 1257(3). By refusing to exercise jurisdiction, this Court would not

undermine "harmonious state-federal relations" and would foster the long-recognized salutary principles of comity and federalism. *See Radio Station WOW, Inc. v. Johnson,* 326 U.S. 120, 124 (1945); *Republic Gas Co. v. Oklahoma,* 334 U.S. 62 (1948); *Younger v. Harris,* 401 U.S. 37 (1971).

B. This Court Should Not Issue A Writ of Certiorari Because The Protective Orders Are Interlocutory And Not Final.

This Court has recognized that the lack of finality of an order "of itself alone" furnishes sufficient ground for the denial of a writ of certiorari. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.,* 240 U.S. 251, 258 (1916). *See also, Estelle v. Gamble,* 429 U.S. 97, 114 (1976) (Mr. Justice Stevens in dissent referred to "the Court's normal practice of denying interlocutory review."). Since the protective orders are not final or appealable under the collateral order doctrine, this Court should deny Mr. Gottschall's petition.

1. The Protective Orders Are Not Appealable As Final Orders.

Subject to certain exceptions not here relevant, appellate jurisdiction generally extends only to appeals from "final decisions" of the lower courts. 28 U.S.C. § 1291; 42 Pa. C.S.A. § 722; *see also, Andrews v. United States,* 373 U.S. 334 (1963); *Cobbledick v. United States,* 309 U.S. 323 (1940). A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but enter the judgment. *Coopers & Lybrand v. Livesay,* 437 U.S. 463, 467 (1978); *Catliv v. United States,* 324 U.S. 229 (1945).

The protective orders in question do not end the litigation; they merely seal that part of the record which was offered to establish J&L's attorney-client privilege. The

protective orders only prevent Mr. Gottschall from improperly disclosing the confidential information filed in connection with J&L's petitions to disqualify Mr. Gottschall, and they merely establish the threshold procedures which the lower court correctly found to be necessary to protect the asserted attorney-client privilege pending the determination of J&L's petitions to disqualify. Hence, to allow Mr. Gottschall's appeals to be considered on the "merits" at this time would unquestionably frustrate the policies underlying the finality requirement for the appealability of orders, *i.e.*, to preclude piecemeal determinations with the consequent protraction of litigation. *See Firestone Tire & Rubber Co. v. Risjord,* 499 U.S. 368 (1981).

Unless the lower court may place under seal evidence offered to support an asserted claim of attorney-client privilege or until the lower court determines the issues raised by the asserted privilege, one would, in effect, be forced to waive the attorney-client privilege in the process of asserting it. Thus, the interim relief of a protective order pending determination of a petition to disqualify based on Canons 4 and 9 is proper and interlocutory.

2. *The Protective Orders Are Not Appealable Under The Collateral Order Doctrine.*

Under the collateral order doctrine, as established by this Court, an order is considered final and appealable only if (i) it conclusively determines the disputed question; (ii) it resolves an important issue completely separate from the disputed question; and (iii) it cannot be effectively reviewed on appeal from a final judgment. *Richardson-Merrill, Inc. v. Koller,* 53 U.S.L.W. 4773 (June 18, 1985); *Firestone Tire & Rubber Co. v. Risjord,* 449 U.S. 368 (1981); *Coopers & Lybrand v. Livesay,* 437 U.S. 463 (1978).

Here, the protective orders meet none of the three requirements of the collateral order doctrine.

First, the protective orders do not conclusively determine the disputed question. Rather, they are interim orders entered by the lower court to protect confidentiality pending a determination of J&L's petition to disqualify Mr. Gottschall. The conclusive determination of the propriety of the protective orders would have occurred at the hearing on the petition to disqualify which was aborted by Mr. Gottschall's request for a stay of the hearing.

Second, the protective orders do not resolve an important issue completely separate from the disputed question. Rather, the orders merely seal those portions of the record relating to J&L's petition to disqualify Mr. Gottschall and prohibit disclosure of the sealed record. Because the complaints filed by Mr. Gottschall in the underlying actions concern matters upon which he worked while an attorney for J&L, the protective orders directly relate to the main cause of action.

Third, the protective orders can be effectively reviewed on appeal from a final judgment. After final judgments have been entered, Mr. Gottschall can appeal the lower court's protective orders and, if successful, unseal the record and disclose to third parties the information he obtained as an attorney for J&L. Deferring consideration of the orders until such time would afford this Court as well as the Pennsylvania appellate courts the opportunity to consider these orders in light of a fully developed factual record which would outline the confidences that J&L reposed in its former attorney, Mr. Gottschall.[3]

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[3]The protective orders are not appealable as injunctions. *Clark v. Lomas & Nettleton Financial Corporation*, 581 F.2d 516 (5th Cir. 1978);

(Continued on next page)

Finally, this Court has recently held that "orders disqualifying counsel in civil cases, like orders disqualifying counsel in criminal cases, are not collateral orders subject to appeal as 'final judgments' within the meaning of 28 U.S.C. § 1291." *Richardson-Merrill, Inc. v. Koller,* 53 U.S.L.W. 4775 (June 18, 1985). Since an order disqualifying Mr. Gottschall would not be collaterally appealable the two protective orders which were merely interim orders entered to protect confidentiality *pending* a disqualification hearing, *a fortiori*, are not appealable under the collateral order doctrine.

C. This Court Should Not Issue A Writ Of Certiorari Because The Protective Orders Conform With This Court's Recent Ruling In *Seattle Times Co. v. Rhinehart.*

This Court should deny Mr. Gottschall's petition not only on the basis of the absence of a final decision by the appellate courts of Pennsylvania and the interlocutory nature of the protective orders, but also on the basis of *Seattle Times Co. v. Rhinehart,* 104 S. Ct. 2199 (1984).

In the *Seattle Times* case, this Court noted that an order prohibiting dissemination of discovered information before trial is not the kind of classic prior restraint that requires exacting First Amendment scrutiny. Moreover, this Court recognized that because pretrial protective orders do not compromise the First Amendment rights of a restricted party as much as other restraints might, and also because litigants and third parties who may have to produce confidential information have protectable privacy

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(Continued)
International Products Corporation v. Koons, 325 F.2d 403 (2nd Cir. 1963).

interests, the trial court has "substantial latitude" to fashion protective orders.

In the underlying actions, Judge Silvestri properly entered the protective orders in order to preserve J&L's attorney-client privilege and to avoid contravention of the policies underlying Canons 4 and 9 of the code of Professional Responsibility. In its petitions to disqualify Mr. Gottschall, J&L set forth confidential information to show that Mr. Gottschall's prior representation of J&L was substantially related to Mr. Gottschall's allegations in the underlying actions.[4] The protective orders were interim only and entered pending a hearing which Judge Silvestri promptly scheduled.[5] If Judge Silvestri had refused to enter the protective orders, J&L would have been placed in the anomalous position of being required to sacrifice confidentiality in order to assert its right to confidentiality and of being required to waive its attorney-client privilege in order to preserve the privilege.

The refusal by courts to sanction such an anomaly was recognized by the Court of Appeals for the District of Columbia Circuit in *United States v. Hubbard,* 650 F.2d 293 (D.C. Cir. 1980). In the *Hubbard* case, the court

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[4]The showing of such a "substantial relationship" is the legal test for disqualification. *See Richardson v. Hamilton International Corporation,* 469 F.2d 1382 (3rd Cir. 1972). The merits of J&L's assertion of the prior attorney-client relationship to disqualify Mr. Gottschall is demonstrated by the fact that Mr. Gottschall was disqualified by a federal court from prosecuting a similar suit against J&L. *See* Appendix C attached hereto.

[5]Like the *Seattle Times* case, which involved the issue of the possible dissemination of information involuntarily produced by plaintiffs through discovery, the information covered by the protective orders was also produced involuntarily by J&L as a result of lawsuits filed by Mr. Gottschall, an attorney, against his former client, J&L.

reversed the lower court's unsealing of confidential documents where, as here, the documents were being used for the sole purpose of demonstrating that their seizure was unlawful and that their confidentiality should be maintained. In holding that it was improper to require sacrifice of confidentiality in order to vindicate confidentiality, the court declared:

> It would be ironic indeed if one who contests the lawfulness of a search and seizure were always to acquiesce in a substantial invasion of these interests simply to vindicate them.

650 F.2d at 321. *Cf. Simmons v. United States,* 390 U.S. 377 (1968).

Further, Mr. Gottschall can hardly complain of any delay resulting from appeals or the fact that he did not cross-examine anyone with respect to the underlying actions. It was Mr. Gottschall, not J&L, who obtained the stay from the Pennsylvania Superior Court one day before the scheduled disqualification hearing, which prevented the lower court from proceeding with a determination with respect to the protective orders. By filing the motion to stay, Mr. Gottschall precluded the lower court from establishing a record as to the relationship between Mr. Gottschall's prior representation of J&L and the subject matter of the underlying actions.

Finally, Mr. Gottschall's claim that the protective orders somehow inhibit his right to counsel is groundless. First, the orders do not preclude Mr. Gottschall from discussing anything with anyone whom he might consult as potential co-counsel. The protective order in GD No. 80-32049 expressly states that Mr. Gottschall can consult with potential co-counsel and the protective order in GD No.

80-26963 was stipulated to be the same in intent and effect. Second, in both actions, Mr. Gottschall is counsel of record and in Paragraph 12 of his class action complaint against J&L in GD No. 80-26963 Mr. Gottschall represented that he is fully competent to represent the alleged class.

CONCLUSION

In view of the foregoing, respondents respectfully request that this Court deny the pending Petition for a Writ of Certiorari.

Respectfully submitted,

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APPENDIX A

CORPORATE LISTING

THE LTV CORPORATION

The LTV Corporation
Ashland Corporation
Continental Emsco Company
Corsair Insurance Company Limited
GK Steel corporation
Gulf States Steel Corporation
Investment Bankers, Inc.
Immobiliaria Nueva Icacos, S.A. de C.V.
J&L Empire, Inc.
Empire Iron Mining Partnership
Jones & Laughlin Steel Incorporated
Kentron Saudi Arabia, Inc.
Kingsley International Insurance Ltd.
LTV Aerospace and Defense Company
LTV Education Systems, Inc.
LTV/EGL Holding Company
L-S Electro-Galvanizing Company
LTV Electro-Galvanizing, Inc.
LTV Energy Products Company
LTV Holdings, Inc.
LTV International, N.V.
LTV International Sales Company
LTV Leasing, Inc.
LTV Properties, Inc.
LTV Sales Finance Company
LTV Steel Specialty Products Company
LTV Steel Company, Inc.
LTV Steel Tubular Products Company
Georgia Tubing Corporation
LTVUS, Corp.
THE LTV Corporation (Wyoming)

Lykes Financial Corporation
Lykes Financial Corporation
Lykes Leasing Corporation
Ore Finance Company
RepSteel Overseas Finance N.V.
Republic International Corporation
Sierra Research Corporation
Western Reserve Capital Management, Inc.

LTV AEROSPACE AND DEFENSE COMPANY SUBSIDIARIES

Am General Corporation
LTA International, N.V.
MLRS International Corporation
Sierra Industries, Inc.
Sierra Information Systems Corporation
National Telephone Systems, Inc.
Natel Communication Services, Inc.
Universal Time/Frequency, Inc.
Sierra Research International Corporation
Vought Industries, Inc.
Vought International, Inc.
Vought Overseas, Ltd.
Vought Arabia
Vought Properties, Inc.

LTV ENERGY PRODUCTS COMPANY SUBSIDIARIES

Conensco Limited
Conensco Marine Systems S.A.
Continental Emsco Company C.A.
Petroequip
Continental Emsco Company de Mexico, S.A. de C.V.
Halcorp, Inc.
Elastomeric Actuators, Inc.

Fibercast Company
Juddcorp, Inc.
J. K. Industries, Inc.
LTV Energy Products Company Limited
Nippon Conensco Co., Ltd.
Oil States Offshore Marine, Inc.
Oil States Rubber Co.
Oil States Rubber Co. (U.K.) Limited
Oil States Rubber DISC, INC.
Technical Plastics, Inc.

LTV HOLDINGS, INC. SUBSIDIARIES

NRE Corporation
North River Energy Company
Reomar, Inc.
Chateaugay Corporation
Pineocean Limited
Republic Builders Products Corporation
Republic Buildings Corporation
Republic Container Company
Republic Drainage Products Company
Republic Steel Services Group, Inc.
Hogg Robinson Group, p.l.c.
Republic Steel Services Group, Ltd.
Cedar Hill Management Ltd.
Republic Hogg Robinson IIS (Bermuda) Ltd.
Republic Storage Systems Company

LTV STEEL COMPANY, INC. SUBSIDIARIES

Agiomet, Inc.
Aliquippa and Southern Railroad Company
Apieco Assurance Ltd.
BCNR Mining Corporation
Beatrice Pocahontas Company
Beckley Coal Mining Company

Bristol Quebec Mining Co., Limited
Buffalo River Improvement Corporation
Carryore, Limited
Chicago Short Line Railway Company
Crystalane, Inc.
Bardale Coal Company
Crystalee
Cuyahoga Valley Railway Company, The
Mahoning Valley Railway Company, The
Dearborn Leasing Company
Donner-Hanna Coke Joint Venture
Economy Fuel and Supply Company
Qundr Corporation
Iron Ore Company of Canada
Jay & Sea Corporation
Jalcite I, Inc.
Jalcite II, Inc.
Black River Line Company
Jalore Mining Company, Ltd.
Jones & Laughlin Environmental Properties, Inc.
Jones & Laughlin Mining Company
Jones & Laughlin Ore Mining Company
J&L Clilffs Ore Partnership
Tilden Mine Joint Venture
Knoll Lake Minerals Limited
Lorain Pellet Terminal Co.
Monongahela Connecting Railroad Company, Inc.
Midland Terminal Company, The
Mesaba-Cliffs Mining Company, The
Negaunee Mine Partnership
Nemacolin Mines Corporation
Northern Land Company
Olga Coal Company
Pioneer Pellet Plant

Presque Isle Corporation
R-N Corporation
Republic Hibbing Corporation
Hibbing Development Company
Hibbing Taconite Company
Republic-Reserve, Inc.
Reserve Mining Co.
Reserve Mining Co.
Republic Technology Corporation
Reserve Mining Company
Reserve Mining Company
Ress Realty Company
The Terminal Garage Company
Sandy Ridge Energy Corporation
Knox Creek Coal Corporation
Lassie Coal Corporation
Sandy Ridge Carbon Corporation
The Prospect Corporation
Sao Carlos Minerios S.A.
Sao Thomas Minerios S.A.
Minerios Minerva S.A.
The River Terminal Railway Company
Tuscaloosa Energy Corporation
Union Drawn Steel Company, Limited
Wabush Iron Co. Limited
Arnaud Railway Company
Wabush Lake Railway Company, Limited
Youngstown Erie Corporation
Erie Development Company
Erie Mining Partnership
Erie Mining Company
YST Erie Corporation

APPENDIX B

OTHER LITIGATION BETWEEN MR. GOTTSCHALL AND J&L

1. On September 5, 1980 Mr. Gottschall filed a class action complaint against J&L in *V. P. Gottschall, et al. v. Jones and Laughlin Steel Corporation, et al.*, No. GD 80-12?8 (Court of Common Pleas of Allegheny County, Pennsylvania) which requested dissemination of certain financial information for 1978 and 1979. That action was discontinued on September 24, 1980 based on a stipulation of counsel and without prejudice to J&L's position as to any liability for dissemination of financial information.

2. On May 27, 1981 Mr. Gottschall filed another class action complaint in *V. P. Gottschall, et al. v. Jones and Laughlin Steel Corporation, et al.*, GD 81-14167 (Court of Common Pleas of Allegheny County, Pennsylvania) which requested dissemination of certain financial information for 1980. That action was subsequently discontinued by Mr. Gottschall because the requested information had already been sent to J&L preferred shareholders before Mr. Gottschall's complaint had been served upon J&L.

3. On June 19, 1981 Mr. Gottschall, as a named class plaintiff, with the law firm of Strassburger, McKenna, Messer, Shilobod and Gutnick as counsel, filed a class action complaint against J&L in *Forstall, et al. v. Jones & Laughlin Steel Corporation, et al.*, Civil Class Action No. 81-1020 (United States District Court for the Western District of Pennsylvania). On March 24, 1982 Judge Bloch granted J&L's motion to disqualify Mr. Gottschall and the Strassburger firm to prevent violations of Canon 4 of the Code regarding the potential disclosure of confidences gained by Mr. Gottschall during his employment as counsel for J&L. No appeal was taken. On October 26, 1982 Judge Mencer denied the motion of the remaining named plaintiffs to

certify the action as a class action on the ground that they had not satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure. On February 7, 1983, the court granted J&L's motion for summary judgment dismissing the claims of the remaining individual plaintiffs for failure to state a claim under the federal securities laws. This order was affirmed by the U.S. Court of Appeals for the Third Circuit in a judgment order dated September 15, 1983. No petition for a writ of certiorari was filed.

4. On May 14, 1985 Mr. Gottschall filed an action against J&L in *V. P. Gottschall v. Jones & Laughlin Steel, Inc., formerly Jones & Laughlin Steel Corporation, a/k/a LTV Steel Corporation,* No. GD85-8594 (Court of Common Pleas of Allegheny County, Pennsylvania). This action is an attempt by Mr. Gottschall to recover attorneys' fees he incurred in his defense of a replevin action by J&L against Mr. Gottschall to obtain the return of J&L documents that Mr. Gottschall had in his possession. The replevin action was filed on March 9, 1981 and was discontinued by praecipe on May 16, 1983 pursuant to a joint stipulation.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWARD L. FORSTALL, et al.,
Plaintiffs,

vs.

JONES & LAUGHLIN STEEL CORPORATION, et al.,
Defendants.

Civil Action No. 81-1020

MEMORANDUM OPINION

BLOCH, District J.

This action is brought pursuant to the Securities Exchange Act of 1934 charging that defendants made false and misleading public statements regarding the stock of Jones & Laughlin Steel Corporation (hereinafter referred to as "J & L") for the purpose of defrauding its shareholders. Plaintiffs allege that such statements and omissions were designed to diminish the value of the stock so that LTV Corporation could purchase the J & L stock of public shareholders at a substantially depressed price.

Defendants (Jones & Laughlin Steel Corporation, LTV Corporation, Jones & Laughlin Industries, Inc., Paul Thayer, Raymond Hay, and Thomas C. Graham) have moved to disqualify and dismiss the complaint of V. P. Gottschall (hereinafter referred to as "Gottschall") who served as counsel for J & L for ten years. Defendants allege that there is a substantial relationship between the subject matter of this litigation and matters handled by Gottschall as counsel for J & L in 1978. Defendants contend that this relationship creates an irrebuttable presumption of confidentiality which prohibits Gottschall from initiating or

participating in litigation against J & L by virtue of case law interpreting Canons 4 and 9 of the Code of Professional Responsibility. Plaintiff Gottschall responds that whether there is a substantial relationship between the subject matter of this suit and his previous work as an attorney for J & L is immaterial because he is not charged with confidences when the client seeks to perpetrate a fraud or criminal scheme.

Defendants also seek disqualification of Gottschall counsel, E. J. Strassburger, Howard F. Messer, and H. Yale Gutnick (hereinafter the "Strassburger firm"), on the ground that counsel has obtained knowledge about the case through the disclosure of confidential information by Gottschall. For the same reason, defendants seek dismissal of the two plaintiffs remaining as class representatives, Edward L. Forstall and William L. Livitski.

The Third Circuit Court of Appeals reviewed a similar case in 1972 involving an attorney who owned stock in a corporation which he had previously represented and who initiated a shareholders' derivative suit against the corporation for allegedly issuing a false and misleadiing proxy statement in connection with a merger. *See, Richardson v. Hamilton International Corp.*, 469 F.2d 1382 (1972). The Court upheld an order disqualifying the attorney as plaintiff in the class action and shareholders' derivative suit on the ground that Canon 4 of the Code of Professional Responsibility, which concerns client confidentiality, might be breached.

The Court reviewed the rationale underlying Canon 4 and found that "the free flow of information from client to attorney, so vital to our system of justice [would] be irreparably damaged" if an attorney were permitted to reveal confidences. *Richardson, supra,* at 1384, citing *United*

States v. Standard Oil Company, 136 F. Supp. 345, 355 (S.D. N.Y. 1955); ABA, Informal Opinion No. 287 (1953). The test for determining whether confidences would be breached is whether the second suit is "so closely connected with the subject matter of the earlier representation that confidences *might* be involved." ABA, Informal Opinion No. 1233 (August 24, 1972). As the Seventh Circuit Court of Appeals recently noted, a finding that the subject matter is related amounts to an irrebuttable presumption that confidentiality existed in order to avoid "compelling the former client to prove the very things that he seeks to keep confidential." *In re Corrugated Container Antitrust Litigation,* 659 F.2d 1341 (1981).

In support of their motion, defendants state that Gottschall was employed from February of 1969 through January 15, 1979, as an attorney with general responsibility for J & L's compliance with securities law. In 1976, he was promoted to the position of Assistant General Counsel with securities matters assigned to his supervision. On this point, Gottschall admits in his answer that he participated on behalf of J & L in discussions and reviews of drafts of a proxy statement relating to the merger of LTV and Lykes, which is described in Paragraph 36 of the Complaint. Also, defendants claim that Gottschall's counsel for this action, the Strassburger law firm, has examined documents of J & L which relate to this litigation and were taken by Gottschall during or after his employment as an attorney for J & L. On this point, Gottschall admits removal of documents which relate to J & L, but he denies that the documents were the property of J & L. Further, he admits that some of the documents relate to the merger of LTV and Lykes and that the Strassburger firm has examined those documents. This Court finds that Gottschall's

involvement in any discussions regarding the merger of LTV and Lykes as counsel for J & L is past representation which bears on the present action. As the Seventh Circuit Court of Appeals noted in a recent opinion, "[w]here parts of the present action and the past representation concern the very same subject matter, reasonable minds must agree they are substantially related." *In re Corrugated Container Antitrust Litigation,* 659 F.2d 1341, 1346 (1981).

Gottschall contends that whether or not there exists a substantial relationship between these matters, J & L cannot assert the privilege of confidentiality because there is no such privilege where a client seeks the attorney's advice in furtherance of the commission of a fraud: "He must let the truth be told." *Clark v. United States,* 289 U.S. I, 53 S.Ct. 465, 77 L.Ed. 993 (1933) (Cardoza, J.). Defendants respond that letting the truth be told is a far cry from initiating a suit for personal monetary gain. The same point was raised and succinctly answered by the Southern District Court of New York in 1971 in an opinion which was upheld by the Second Circuit Court of Appeals: "If an attorney believes that executives of a corporate client are engaging in wrongful conduct, he may disclose this to the corporation's board of directors; but he infringes Canon 4 if he himself institutes suit. ABA Opinion 202 (1940)." *Doe v. A. Corp.,* 330 F. Supp. 1352 (1971), affirmed, 453 F.2d 1375 (2d Cir. 1972).

Finally, Gottschall argues that he should be permitted to maintain his suit against the remaining defendants, LTV Corporation and Jones & Laughlin Industries, Inc. (hereinafter referred to as "JLI"), if his suit against J & L is dismissed. The complaint alleges that J & L and JLI were subsidiaries of LTV. For purposes of ethical considerations, the ABA Committee on Ethics and Professional

Responsibility has opined that "as a matter of reality and practicality," the separate legal entities of the corporations should be ignored. ABA Informal Opinion 973.

This Court, therefore, finds that Gottschall's complaint should be dismissed. In responding to the motion, Gottschall admitted that his own disqualification would require disqualification of the Strassburger firm. Indeed, for the disqualification to serve its intended purpose of prohibiting the disclosure of client confidences, this Court will also enjoin Gottschall and the Strassburger firm from disclosing confidential information to anyone.

In addition to disqualification of the Strassburger firm, defendants seek dismissal of the suit brought by plaintiffs Edward L. Forstall and William J. Livitski on the ground that they may be privy to confidential information disclosed by Gottschall. Affidavits submitted by the named plaintiffs indicate no exchange of confidential information has taken place. Since both parties have urged this Court to decide defendants' motion based on the facts set forth in pleadings and affidavits of record, this Court finds no evidence which would support dismissal of the complaint brought by plaintiffs Forstall and Livitski. Dismissal of Gottschall's complaint does not interfere with the right of other class members to maintain this action.

An appropriate Order will be issued.

Date: 3/24/82

ALAN N. BLOCH
United States District Judge

ORDER

AND NOW, this 24th day of March, 1982, upon consideration of the Motion to Disqualify the Named Plaintiffs and the Attorneys for the Plaintiff Class and to Dismiss this Action filed by Defendants, Jones & Laughlin Steel Corporation, LTV Corporation, Jones & Laughlin Industries, Inc., Paul Thayer, Raymond Hay, and Thomas C. Graham, in the above captioned matter on October 1, 1981,

IT IS HEREBY ORDERED that said Motion is GRANTED in part as follows:

1. V. P. Gottschall is disqualified as a named plaintiff and as a class representative;

2. V. P. Gottschall is prohibited from communicating to other class members any information concerning J & L that he acquired in connection with his employment as an attorney for J & L;

3. H. Yale Gutnick, Howard F. Messer, E. J. Strassburger and the firm of Strassburger, McKenna, Messer, Shilobod & Gutnick are disqualified from representing any members of the class in this or any similar action; and

4. H. Yale Gutnick, Howard F. Messer, E. J. Strassburger and the firm of Strassburger, McKenna, Messer, Shilobod & Gutnick are prohibited from communicating to class members any information they received from V. P. Gottschall that he acquired in connection with his employment as an attorney for J & L.

IT IS FURTHER ORDERED that said Motion is DENIED, insofar as Defendants seek to disqualify E. L. Forstall and W. J. Livitski.

ALAN N. BLOCH
United States District Judge

cc: E. J. Strassburger, Esquire
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